

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

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CASES CITED

<u>Teplitzky v. Bureau of Compensation, U.S.</u> <u>Department of Labor, 288 F. Supp. 310</u> (S.D.N.Y. 1968) modified on other grounds 398 F.2d 820 (2nd Cir. 1968) cert. denied 393 U.S. 943 (1968). Unreported opinions appear in Docket number 67 CIV 1019 (S.D.N.Y.) and 72 CIV 2469 (S.D.N.Y.).	3
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STATUTES

5 U.S.C. §8116	4
5 U.S.C. §8128(b)(1)(2)	4

UNITED STATES DISTRICT COURT
FOR THE SECOND CIRCUIT

-----X

LOUIS TEPLITSKY,	:	
	:	
Plaintiff-Appellant,	:	
	:	Docket No. 77-6094
-against-	:	
	:	
U.S. BUREAU OF COMPENSATION	:	
DEPARTMENT OF LABOR	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendants-Appellees.	:	

-----X

BRIEF OF THE UNITED STATES
ON BEHALF OF U.S. BUREAU
OF COMPENSATION, DEPARTMENT
OF LABOR

STATEMENT

The plaintiff appeals pro se from a memorandum order of the United States District Court, Southern District of New York, Judge Broderick, dated May 24, 1977, dismissing his complaint on the grounds of res judicata, and an order dated July 27, 1977, denying his motion for reconsideration. The issues presented in appellant's brief are identical to those he has previously raised before both the District Court and this Court on numerous occasions. In all prior litigation, the plaintiff's complaint has been dismissed, and that action affirmed by this Circuit.

ISSUE PRESENTED

Was the District Court correct in dismissing plaintiff's action as having already been fully litigated?

FACTS

Plaintiff is a World War II veteran who was discharged during that war with 50% psychiatric disability. In December 1963 plaintiff sustained an injury in the left inguinal area while temporarily employed by the United States Post Office in New York City. On March 8, 1964, he was determined to be totally physically disabled; he received total disability benefits until November 9, 1964, at which time he was determined to be partially physically disabled. In September 1965 the Veterans Administration determined that he was 100% psychiatrically disabled. Subsequently, the Bureau of Employees Compensation also found him 100% psychiatrically disabled.

Having been found psychiatrically disabled by two Federal agencies, plaintiff was advised that he must choose benefits from either the Veterans Administration or the Bureau of Employees Compensation. He has refused to make such an election and is continuing to refuse to cash the checks he receives monthly from the Veterans Administration, since he apparently believes that to do so would prejudice his claim against the Bureau of Employees Compensation.

Appellant's initial action was dismissed by Judge MacMahon in Teplitsky v. Bureau of Compensation, U.S. Department of Labor, 288 F. Supp. 310 (S.D.N.Y. 1968), modified on other grounds, 398 F.2d 820 (2nd Cir. 1968), cert. denied 393 U.S. 943 (1968). His subsequent action (67 CIV 1019) was dismissed again by Judge MacMahon in a memorandum filed February 9, 1970. In a memorandum dated April 10, 1973, Judge MacMahon dismissed another action by the plaintiff in 72 CIV 2469. This was affirmed by the Second Circuit in Docket No. 73-1625. Certiorari was denied by the Supreme Court, 417 U.S. 970 (1974). Under the same civil number, Judge MacMahon again denied plaintiff's motion for reconsideration, and this was appealed to this Court. That appeal was dismissed (Docket No. 75 CIV 8268) on October 8, 1975, and a writ of certiorari was again denied by the Supreme Court, 423 U.S. 1090 (1976).

The present action was based on what the appellant claims to have been newly discovered evidence, namely, that the Veterans Administration had determined in September 1973 that the appellant's World War II nervous and emotional injury was directly attributable to his military service. This is the only allegation which distinguishes the present complaint from the prior ones.

I. The District Court was correct in dismissing this action.

It is evident from the history of this litigation given above that Mr. Teplitsky has had innumerable opportunities to litigate fundamentally the same issues, namely, his claim that he is entitled to obtain disability payments from both the Veterans Administration and the Bureau of Employees Compensation. Since there was nothing in the complaint in the present case which substantively distinguishes it from the prior litigation, Judge Broderick's determination that the issues previously had been fully litigated is clearly correct and must be affirmed.

II. The complaint herein does not present a cause of action.

As has been previously held by the Southern District and this Court, the plaintiff is not entitled to disability compensation from more than one agency. 5 U.S.C. §8116. In any event, the District Court has no jurisdiction to review a determination made under the Employees Compensation Act, 5 U.S.C. §8128(b)(1)(2). Finally, none of the additional allegations in appellant's brief overcome the lack of jurisdiction or raise any issues that have not been previously determined adversely to him in the prior litigation. Even if this Court were to give the appellant every possible doubt and hold that a new issue was raised in this complaint, there is no jurisdictional basis for the complaint and it must be dismissed.

CONCLUSION

The decision of Judge Broderick dismissing
Mr. Teplitsky's complaint should be affirmed in all
respects.

Respectfully submitted,

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STATE OF NEW YORK
COUNTY OF NEW YORK

ss.:

Patricia Miller, ~~being duly sworn~~, deposes and says;
that deponent is not a party to this action and is over 18 years of age.
That on the 26 day of Sept. 19 77, deponent served the within

Brief
upon the attorney(s) for the plaintiff pro se

by depositing a true copy thereof securely enclosed in a franked wrapper, in a post office box regularly maintained by the United States Post Office Department at 26 Federal Plaza, in the Borough of Manhattan, City of New York, addressed to said attorney(s) as follows:

Mr. Louis Teplitsky
.2136 Wallace Avenue
Bronx, New York 10462

that being the address designated by said attorney(s) for that purpose.

I verify under penalty of perjury that the foregoing is true and correct.

Sworn to before me this

26 day of Sept. , 19 77.

Patricia Miller

